IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 568 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and
MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

LAXMIGHAR KAMLAPAT PANDE

Appearance:

Ms. HANSA PUNANI APP for Appellant

MR RR MARSHALL for Respondent

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 01/12/1999

ORAL JUDGEMENT (Per: M.H.Kadri,J)

#. The State of Gujarat has questioned the legality and validity of the judgment and order dated January 30, 1992, passed by the learned Additional Sessions Judge, Surat, whereby the respondent was acquitted for the offences punishable under section 8 read with section 20(B)(1)(2) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be called as "the Act") of the respondent.

#. The prosecution case be summarized as under. P.S.I. J.S. Parmar of Umra Police Station on February 27, 1991 at about 16-05 hrs. received an information that respondent who was having pan-bidi cabin near Parle Point at Surat was illegally selling the narcotic substances i.e. charas and ganja. On receiving the information, P.S.I. Parmar called two panchas and in their presence, he carried out a raid on the cabin of the respondent along with a P.S.I. and the panchas. Other police officers were also present in the raid. The cabin was searched in the presence of the panchas wherein 207 plastic bags each containing 5 grams of charas were found. Total weight of the charas was found to be 1 kg. and 35 grams. Narcotic substance weighing 70 grams of ganja was also seized from the cabin of the respondent. Both the narcotic substances were seized under the panchnama and a seal bearing impression of "Police Inspector, Umra Police Station" was affixed. On the personal search of the respondent, currency notes of Rs. 120/= were recovered which were also seized under the panchnama. P.S.I. Parmar handed over the seized muddamal articles to Umra Police Station along with his complaint filed against the respondent for the offences punishable under the Act as referred to above. P.S.I. Parmar thereafter submitted his report to his superior officer i.e. Police Inspector Mr. Bhatt. Residence of the respondent was also searched, but no incriminating article or narcotic substance was found.

#. On the basis of the complaint lodged by P.S.I. Parmar, offence was registered against the respondent for the offences punishable under section 8 read with section 20(B)(1)(2) of the Act. The investigation of the above offence was handed over to P.S.I. Parmar. P.S.I. Parmar recorded the statements of the witnesses and sent the muddamal narcotic substances for analysis to the FSL. On receipt of the report of the FSL, chargesheet came to be filed against the respondent on April 20, 1991. As the offence under the N.D.P.S. Act was exclusively triable by the court of Sessions, the said case was committed to the court of Sessions wherein it was numbered as Sessions Case No. 96/91.

#. Charge exh. 2 was framed against the respondent for the offences punishable under section 8(C) read with section 20(B)(1)(2) of the Act. The charge was read over to the respondent wherein he pleaded not guilty and claimed to be tried. The prosecution to prove the guilt of the respondent examined (1) P.W. 1 Shailesh Umashanker Pathak, Exh.6. (2) P.W. 2 Jaisey Jose

Christian, Exh. 7. (3) P.W. 3 Mehmoodbhai Safibhai, Exh. 8. (4) P.W. 4 Radhakishan Nathuji, Exh. 10. (5) P.W. 5 Gambhirbhai Sadhubhai, Exh. 12. (6) P.W. 6 Rajendra Bhikhaji, Exh. 16 and (7) P.W. 7 P.S.I. Jashubha Sardarsinh Parmar, Exh. 18. To prove the guilt of the respondent, the prosecution produced documentary evidence such as complaint lodged by P.S.I. Parmar, panchnama of seizure of narcotic substances charas and ganja, report of FSL etc.

#. After the evidence of the prosecution was over, respondent was questioned generally and his statement came to be recorded under section 313 of the Code of Criminal Procedure. The respondent in his further statement stated that when he was passing by the police chowky, he was called inside and his signature was obtained on the paper and he was detained in the police chowky. He stated that he was not taken to a Gazetted Officer. He stated that a false case has been filed against him.

#. Learned Additional Sessions Judge on overall appreciation of oral as well as documentary evidence concluded that there was inordinate delay in sending the muddamal article for analysis to FSL. It was also concluded by the learned Additional Sessions Judge that mandatory provisions of section 50 of the Act were not complied with and the evidence of the raiding officer did not inspire confidence. On the basis of the above-referred conclusions, learned Additional Sessions Judge acquitted the respondent of the charges mentioned above which has given rise to the filing of the present appeal by the State of Gujarat.

#. Learned APP Ms. Hansa Punani has taken us through the entire evidence produced on the record of the case and has submitted that the learned Additional Sessions Judge erred in acquitting the accused and not relying on the evidence of P.S.I. Parmar and other police officers who were present at the time of search and seizure carried out at the cabin of the respondent wherein narcotic substances were found. Learned APP has further submitted that the evidence of P.S.I. Parmar was corroborated by the other police officers who were present at the time of carrying out of the search and the seizure. It is vehemently submitted by learned counsel for the appellant that the offence under the Act was serious in nature and the learned Additional Sessions Judge ought not to have acquitted the respondent and therefore, the appeal be allowed and the acquittal be set aside.

#. We have also heard the learned counsel for the respondent. Learned counsel for the respondent has submitted that there was no compliance of the mandatory provisions of section 50 of the Act. In support of the above submission, learned counsel for the respondent has placed reliance on the decision of the Supreme Court reported in JT 1999 (4) SC, 595 in the case of State of Punjab v. Baldev Singh and 1994 (3) SC 299 equivalent to AIR 1994 SC 1872 in the case of State of Punjab v. Balbir Singh. Learned counsel for the respodnent further submitted that the prosecution had not led sufficient evidence to prove that mandatory provisions of section 50 were followed and the evidence of P.S.I. Parmar did not inspire confidence and the learned Additional Sessions Judge had observed with regard to the investigation and search carried out by P.S.I. Parmar. Learned counsel for the respondent further submitted that when the independent witnesses did not support the prosecution case about the search and seizure, the prosecution ought to have led cogent and reliable evidence to prove that mandatory provisions were complied with by the raiding officer. Learned counsel for the respondent therefore submitted that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondent and this being acquittal, no interference of this Court is called for and the appeal be dismissed.

#. The evidence of P.S.I. Parmar as well as the oral evidence of other police officers who had carried out the raid in the cabin of the respondent did not indicate that before search and seizure, the respondent was made aware of his right to be searched in the presence of a Gazetted Officer or a nearest Magistrate. The complaint as well as panchnama produced in the record of this case also do not indicate that the mandatory provisions of section 50 were followed by the searching officer. The Constitution Bench of the Supreme Court in the decision of the State of Punjab vs. Baldev Singh reported in JT 1999 (4) SC, P. 595 has ruled that failure to take accused for search before a Gazetted Officer or a Magistrate amounts to non compliance of mandatory provisions of section 50 of the Act. It was further ruled by the Supreme Court in the above-mentioned decision that if the accused is not informed of his valuable right to be searched in the presence of a Gazetted Officer or a Magistrate, it would render the search and seizure illegal. In this case, as the accused was not informed about his search before a Gazetted Officer or a Magistrate, his valuable right was not safeguarded as held by the Supreme Court in the case of Baldev Singh (Supra). The provisions of section 50

must be scrupulously followed before carrying out the search. We are therefore of the view that there was total non compliance of the provisions of section 50 of the Act. We therefore confirm the finding of the learned Additional Sessions Judge that the prosecution had failed to prove that the searching officer had followed the mandatory provisions of section 50 of the Act before carrying out the search of the respondent and seizure of the narcotic substance.

##. The muddamal narcotic substances were seized on February 27, 1991 which were handed over to Umra Police Station on the same day at about 6.00 p.m. It should be noted that the muddamal substance was sent to FSL on March 11, 1991. There is no evidence produced by the prosecution as to in what condition the muddamal article was kept at the Umra Police Station. Learned Additional Sessions Judge had concluded that there was inordinate delay in sending the muddamal narcotic substance to the FSL. The prosecution had not led sufficient evidence to prove as to under what circumstances, the delay of 14 days had taken place in sending the muddamal to the FSL. P.S.I. Parmar in his oral evidence had also admitted that the accused was not made aware about the grounds of his arrest. Section 52 of the Act provides that any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest. As stated above, the searching officer also as Investigating Officer had admitted in his oral evidence that the accused was not made aware of the grounds of his arrest.

##. The conclusions arrived at by the learned Additional Sessions Judge with regard to the acquittal of the respondent in our opinion, are cogent and convincing and in no circumstances, the findings of the learned Additional Sessions Judge can be called perverse.

##. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired the confidence of the learned Additional Sessions Judge, who had an opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Additional Sessions Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the

learned Judge and in our view, the expression of general agreement with a view taken by the learned Additional Sessions Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi and others v. Bijendra Narain Chaudhary, AIR 1967 SC 1124; and (2) State of Karnataka vs. Hema Reddy and another AIR 1981 SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the accused-respondent. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondent. Learned APP has failed to convince us to take the view contrary to the one already taken by the learned Additional Sessions Judge and therefore, the appeal is liable to be rejected.

##. As a result of the foregoing discussion, this appeal is dismissed. The muddamal articles to be disposed in view of the directions given by the learned Judge in the impugned judgment.

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